

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of California-American Water Company (U-210-W), a California corporation, RWE Aktiengesellschaft, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Plc, a corporation organized under the laws of the United Kingdom and Wales, and Apollo Acquisition Company, a Delaware Corporation, for an order Authorizing Apollo Acquisition Company to merge with and into American Water Works Company, Inc. resulting in a change of control of California-American Water Company, and for such related relief as may be necessary to effectuate such transaction.

Application 02-01-036
(Filed January 28, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING FURTHER BRIEFING FROM THE SETTLING PARTIES**

This ruling requests the settling parties to file a supplemental brief responding to this ruling no later than October 7, 2002.¹ The settling parties may file a joint brief or separate briefs. There will be no replies.

¹ The settling parties include joint applicants, the Office of Ratepayer Advocates, and the Utility Workers of America, AFL-CIO.

At various times throughout this proceeding, the Montara Sanitary District (Montara) and the City of Thousand Oaks have generally argued that joint applicants intend to recover the acquisition premium through future rates. In their joint reply brief, joint applicants respond to this argument, stating, in part, that they have made it “absolutely clear from the outset of this proceeding ...that they do not intend to recover the acquisition premium through rates.” (Joint Reply Brief at p. 25.)

For the first time in its reply brief,² Montara specifically explains how it believes RWE Aktiengesellschaft (RWE) plans to recover at least a portion of the acquisition premium in rates. Essentially, Montara argues that as a result of the acquisition contemplated by this application, RWE will pay American Water Works and California-American Water Company’s (Cal-Am) shareholders in full for the acquisition premium they incurred in acquiring the water facilities of Citizens Utilities Company of California (Citizens). This is so, according to Montara, because the transaction contains a \$2.8 billion acquisition premium beyond the book value of the assets. Montara argues that once the shareholders are paid for their interest in American Water Works, there is no longer a justification for the Commission to set Cal-Am’s rates in former Citizens districts above Cal-Am’s cost of service to reflect and pay off the Citizens acquisition premium, and to do so (as currently required by the Alternative Sharing Proposal adopted in Decision (D.) 01-09-057) would in fact require Cal-Am

² While the Commission strongly discourages parties from raising new arguments in their reply briefs, Montara (and the City of Thousand Oaks) have made the general argument regarding applicants’ recovery of the acquisition premium earlier. However, because Montara did not raise this specific example prior to filing its reply brief, I request the settling parties to address this issue in order to develop a complete record.

ratepayers in the former Citizens districts to pay in their rates a portion of the acquisition premium incurred by RWE. (See pages 3-5 of Montara's reply brief for the specifics of this argument.)

I request that the settling parties in this application address the following issues:

1. Please respond to Section I.A of Montara's reply brief from pages 3-5.
2. Assuming for the sake of argument the Commission agrees with Montara's position, and also decides to approve the settlement agreement and application, what action must the Commission take in this proceeding to give effect to the parties' intent that RWE not recover the acquisition premium (or any portion of it, including that portion which is also the acquisition premium in D.01-09-057) or other acquisition costs of this transaction through future rates? (For example: Should the Commission eliminate the Alternative Sharing Proposal adopted in D.01-09-057 in order to ensure this outcome? If not, what Commission action is appropriate with respect to the Alternative Sharing Proposal or otherwise to ensure that RWE does not pass any portion of the acquisition premium or other acquisition costs of this transaction to ratepayers?)

IT IS RULED that the settling parties shall respond to the questions set forth in this ruling no later than October 7, 2002 by joint or separate briefs. There will be no further replies.

Dated September 26, 2002, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Further Briefing From the Settling Parties on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated September 26, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.